

Openreach response to the Ofcom document

“Quality of Service for WLR and MPF. Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews”

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Non – Confidential Version

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Foreword

On 5 August 2016, Ofcom published a consultation wherein it proposed certain interim changes to the Quality of Service remedies applied to WLR and MPF (the "Interim Consultation").

This submission is provided on behalf of British Telecommunications plc ("BT") by Openreach, a functionally separate division of BT, in response to the questions contained in the Interim Consultation.

1 Executive Summary

Openreach agrees with Ofcom that changes are needed to the repair Minimum Service Levels (MSLs) in order to maintain their relevance and effectiveness following the large scale Service Maintenance Level (SML) migrations associated with the Wholesale Line Rental (WLR) and Metallic Path Facility (MPF) products.

We also support aspects of Ofcom's proposed approach, including:

- Helping to 'future-proof' the repair schemes by moving to a scheme for SML1 (both products combined) and SML2 (both products combined); and
- Limiting the interim changes solely to those that are required as a consequence of the SML migrations.

However, Openreach disagrees with the proposed change to the compliance cycle of the repair MSLs from April to March to October to September. We consider that this approach creates a misalignment with other connected operational and regulatory processes which is very problematic, and that furthermore Ofcom does not set out how or even if this misalignment will be dealt with in future.

Openreach suggests that a more appropriate approach for the interim repair MSLs would be for Ofcom to set an 18 month compliance period running from October 2016 to March 2018. This approach would only differ from Ofcom's proposal by adding 6 months to the compliance period, but is simpler and more effective in resolving (over a known timescale) the non-trivial issue of misaligned operational and regulatory cycles. We also note that Openreach's proposal deals with Ofcom's concerns in relation to Openreach's earlier proposal (as described in the Interim Consultation), does not dilute existing remedies in any way and offers certainty to stakeholders. It also has the important benefit of bringing the repair MSLs back into alignment with the provision MSLs on an April to March financial year cycle, which will be important for the next three-year charge control period.

The SML migration has created a number of significant operational challenges for Openreach which taken together have created temporary downward pressure on MSL performance which could not be fully mitigated by Openreach action. In this response we set out the learning that needs to be taken from this experience and applied in future as appropriate, including in relation to assessments of MSL compliance.

Finally, Openreach agrees with Ofcom's KPI proposals whilst noting that further discussion with Ofcom may be required in relation to presentational detail for changes that will be needed to the public KPIs.

More detailed comments are provided in response to Ofcom's consultation questions in the remainder of this document.

2 Responses to questions in Ofcom's Consultation: "Quality of Service for WLR and MPF"

Question 1: Do you agree with Ofcom's proposals set out above to amend the minimum service standards imposed through the 2014 FAMR? If not, please set out your reasons.

As noted by Ofcom in the Interim Consultation, there have recently been significant changes to the way that certain Communications Providers (CPs) consume the WLR and MPF products.

Specifically, certain CPs have decided to change the SML¹ that they purchase in conjunction with the underlying product, and the effect of these SML migrations has been to progressively 'hollow out' the existing repair MSLs that were imposed in the 2014 Fixed Access Market Review (FAMR) solely by reference to SML1 for WLR and SML2 for MPF.²

Given the relevance of the SML migrations to the existing repair MSL schemes for WLR and MPF, Openreach made Ofcom aware of the SML migrations, and has continued to keep Ofcom updated in this regard.

At time of writing, the status of the SML migrations is as follows:

- [CONFIDENTIAL].
- [CONFIDENTIAL].
- [CONFIDENTIAL].

Openreach understands Ofcom's concern that doing nothing would risk undermining the ongoing effectiveness of the existing repair MSL remedies (which are themselves an important part of the wider Quality of Service remedies Ofcom imposed in 2014), and that in the circumstances Ofcom has decided to undertake what is effectively an interim intervention ahead of the imposition of remedies via the next market review.

Openreach considers that the purpose of the Interim Consultation should be limited to dealing with the narrow and specific set of issues that have arisen as a consequence of the changes in CP SML consumption. In this regard, we agree with Ofcom that it would not be appropriate in the Interim Consultation to consider broader questions such as the level of the MSLs, or the services that are subject to MSL remedies.³ Such questions should be dealt with via the market review process, particularly given, for example, that proper consideration would need to be given to the funding arrangements in the charge control prior to changing the depth or breadth of the MSL remedies. We consider that this is the only appropriate process for Ofcom to employ if it wishes to make broader structural changes and for its remedies to be considered proportionate and objectively justifiable.⁴

Openreach therefore considers that the provision MSLs imposed in 2014 should not be amended, and that the changes being made to the repair MSLs should be limited only to those that are necessary to address the specific issues created by the SML migrations. In this regard it is right that no changes are made to the other features of the repair MSLs including *inter alia* the regional structure, the MBORC arrangements (including the 'High Level MBORC' allowance) and the levels that they are set at.⁵

¹ SMLs are the different repair packages that CPs are able to purchase in conjunction with the underlying WLR or MPF product.

² See FAMR legal instrument: http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixd-access-market-reviews-2014/statement-june-2014/Annex_29.pdf conditions 12.1A and 12.1B.

³ See Interim Consultation paragraphs 2.14 and 2.15.

⁴ As required by section 47(2) of the Communications Act 2003.

⁵ 77% for year 3 taking account of the 3% allowance for faults subject to MBORC.

Openreach provides further commentary on the main changes being proposed by Ofcom below.

Commentary in relation to the principal changes being proposed by Ofcom

The first significant change that Ofcom is proposing in the Interim Consultation is to move the MSLs from WLR at SML1 and MPF at SML2 to an SML1 scheme with combined products (i.e. WLR and MPF added together) and an SML2 scheme with combined products. This approach appears to create repair MSLs that will be better 'future-proofed' against any future large scale SML migrations.

Openreach understands that the compliance measurement for the new schemes will be calculated by adding the performance of MPF and WLR at the same SMLs together. Openreach supports this approach and agrees with Ofcom that the risks of discrimination between the products are adequately mitigated by the existing service monitoring programme that is in place.⁶ Openreach also agrees with and would amplify Ofcom's consideration that "*...the structure of Openreach's service structure does not readily lend itself to such discrimination.*" In fact, WLR and MPF at SML1 and SML2 respectively are served from the same operational books and are treated the same. There is no attempt to, nor any plans to, discriminate between the products in terms of service outcomes. The opposite is true; and Openreach will consistently aim to exceed the MSLs imposed for both products. Openreach's performance in the past 2.5 years since the MSLs were imposed testifies to this, with all repair MSLs for both products having been successfully exceeded to date, with no suggestion of underlying discriminatory behaviour on Openreach's part.⁷

Openreach notes Ofcom's view that should extra funding be required to meet the additional operational challenges that are presented by Ofcom's proposals, it in theory already has the freedom to address this by changing (increasing) the pricing for MPF at SML1 and WLR at SML2, subject to the regulatory constraints that exist.⁸

The second significant change that Ofcom is proposing to make is to alter the timing of the compliance assessment from an April to March cycle to an October to September cycle. Openreach strongly disagrees with this aspect of the Ofcom proposals, and provides further comments on this, including making an alternative proposal, in the response to question 2.

The third significant change that Ofcom is proposing to make is to amend all of the MSLs imposed in the 2014 FAMR such that when the existing compliance periods expire, the MSLs will be automatically rolled forward for a period of 1 year. Openreach provides comments in relation this aspect of the Ofcom proposals in its response to question 5.

Comments in relation to the need for an agreed industry and regulatory approach dealing with future SML migrations

The migration of high volumes of WLR and MPF between different SMLs has presented very significant operational challenges to Openreach above and beyond those that could be reasonably considered as 'business as usual'.⁹

For example, as shown in Figure 1 below, and as a direct result of the SML migrations, by the date of 23 July 2016 around three quarters of Openreach's repair work was due for completion on next working day or sooner (i.e. at SML 2 or above), a greater proportion than had been experienced historically. This level was also higher than had been previously expected at that point in time because (a) [CONFIDENTIAL] and (b) [CONFIDENTIAL]. Although Figure 1 does not capture the full effects of the SML migrations (given that the overall migration programme was not completed during the period shown), it does illustrate some of the very significant impacts of the programme and degree of change / disruption caused.

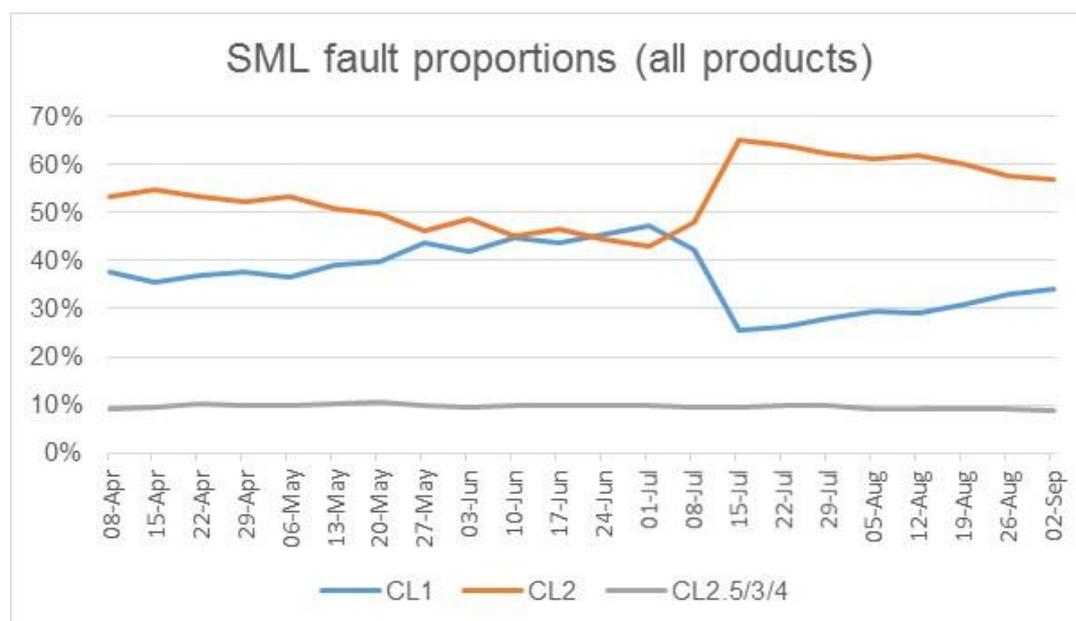
⁶ See Interim Consultation paragraph 3.13.

⁷ Ofcom has been provided with the compliance submissions for years 1 and 2 of the current regime. The performance YTD for the year 3 repair MSL of the current regime is shown in table 1 of this response.

⁸ See Interim Consultation paragraph 3.21.

⁹ Business as usual would include, *inter alia*, exceeding MSLs.

Figure 1 – SML fault proportions (All products)¹⁰



In addition to operational challenges posed by the scale of the movement in SML proportions, and the timing thereof, Openreach has also had to deal with the following considerations:

- The ‘tail’ effect caused by SML migrations. Openreach will not migrate circuits that have an open fault registered against them. As a consequence of this, there will be a short period where a tail of more complex faults are left and this will impact performance against the MSL measure.
- The geographical distribution of WLR at SML2. WLR is relatively more rural than the MPF equivalent and in consequence, Openreach now has to serve an SML2 estate with a more challenging geographic distribution (because, for example, the average engineering journey time is greater in rural than urban areas) than was previously the case. This has led, *inter alia*, to the need to change engineering roster patterns for Openreach field engineers.

All of these factors have led to some disruption of Openreach’s ability to deliver service, and have for a period of time applied a downward pressure on the performance against the repair MSLs.

Openreach took (and continues to take) all reasonable tactical steps to address the additional challenges arising from the SML migration including, *inter alia*, recruitment, intra-regional resource loans, amending roster patterns and increasing overtime levels. However, it is not reasonable to assume that such impacts can be automatically and fully mitigated by Openreach action within tight timescales. This is because, for example:

- Large scale migration programmes, however well planned, are subject to change, sometimes at short notice (as noted above in this case) and so cannot always be fully / accurately prepared for by the supplier (i.e. Openreach); and
- Some of the measures that Openreach has needed to take to address the challenges posed by the SML migration necessarily take significant time to complete. In particular we estimate that it takes around 9 months to recruit and deploy new engineers as fully effective resource into the field, while the changes to the engineering roster patterns that are needed have

¹⁰ The products covered are Classic (Analogue, ISDN2, ISDN30), WLR3 (Analogue, ISDN2, ISDN30), GEA – FTTC, GEA - FTTP, SMPF, MPF, and SFI.

required union agreement and are subject to ongoing consultation at branch level ahead of implementation (which could take a further 6-13 weeks).

In summary, the SML migration has presented a significant challenge to Openreach, has applied downward pressure to the MSL performance (which Openreach has nevertheless maintained above the required level for both products and in all regions as set out in the response to question 3), and could not have been fully mitigated by Openreach, nor could it have been forecast with any certainty at the point when the MSLs were imposed by Ofcom. Given these considerations, Openreach believes that some collective lessons should be taken from this process, and in particular should a future migration of similar scale occur:

- There should be ongoing review of the industry agreed migration processes. An industry process was developed in this instance via OTA2 facilitation. Openreach agrees with this approach, but notes that even this has not prevented difficulties arising. For example, the industry agreed notice period of 3 months between forecast and fulfilment has not always provided sufficient time for Openreach to fully deal with operational measures that have a longer than 3 month lead time (e.g. recruitment and the need to change regional roster patterns). We also note, non-critically, that even carefully agreed processes cannot cater for CPs changing their plans during the process itself and that this needs to be borne in mind in order to provide reasonable protection to the supplier.
- A regulatory environment that does not penalise Openreach in circumstances where MSL performance is compromised as a result of SML migrations in way that could not reasonably be fully mitigated by Openreach. Specifically, Openreach suggests that Ofcom explicitly states following the Interim Consultation that such factors would be taken into account as appropriate as part of any future MSL compliance evaluation.

Question 2: Do you agree with Ofcom's proposal for measuring compliance against the minimum standards set out above and on the Directions set out in Annex 5? If not, please set out your reasons.

There are two key parts to Ofcom's proposal for measuring compliance against the revised MSL: the duration of the compliance period, and the cycle the compliance period operates to (i.e. the 'from – to' dates).

Openreach strongly believes that the compliance period for an MSL should not be less than 1 year. In the 2014 FAMR, Ofcom correctly recognised that operational conditions varied during the year (for example winter is typically more demanding than other parts of the year because weather conditions are often worse), and that having a compliance period of 1 year would allow Openreach to balance periods of high demand and low demand and through this, be able to manage its operational resources more efficiently than would otherwise be the case.¹¹ As Openreach previously suggested, a shorter MSL period would need to have an adjusted MSL target to reflect seasonality effects, but as Ofcom indicates, this may be challenging to model robustly.

The requirement for a sensible compliance period remains as relevant now as it was when the MSLs were originally imposed in the 2014 FAMR, and it is therefore right that the final interim arrangement that is imposed by Ofcom via this consultation maintains a compliance period of at least 1 year.

Fault intake levels are sensitive to a variety of weather conditions, and so the level of operational 'demand' (i.e. the fault intake levels) can vary significantly during any given year, and may be subject to seasonal factors. The need for a compliance period that allows Openreach to make the most efficient resourcing decisions is therefore highly relevant to the MSLs under consideration in the Interim Consultation.

Implications of Ofcom's proposed compliance cycle for the interim repair MSLs

Ofcom is proposing to move the repair MSLs, at least on an interim basis, to an October to September cycle, with the new arrangements coming in theory into effect from 1 October 2016.

Openreach strongly disagrees with this aspect of Ofcom's currently recommended proposal. We have a number of concerns in this regard, in particular that:

- The Ofcom proposal moves the repair MSLs out of alignment with all other MSLs and out of alignment with the normal Openreach planning cycle in general, all of which run in April to March cycles. This is inefficient since it makes existing processes inherently more complex;
- The Ofcom proposal moves the repair MSLs out of alignment with other highly connected regulatory remedies including the charge controls;
- The Ofcom proposal offers no solution as to how or when the issues of misalignment will be resolved. Given that the misalignment is undesirable, it makes sense to address this problem as part of the Interim Consultation rather than postponing it to the market review; and
- The Ofcom proposal commences in a typically more challenging period in the year. This could lead to (in perception at least) a relatively 'weak' start to the new compliance period which we are concerned could give rise to morale issues and contribute to additional management overhead.

As Ofcom is aware, Openreach operates to an annual cycle that is based around a financial year that runs from April to March. The planning cycles used by the business normally work in conjunction with this timetable. This includes those processes relating to the operational resources, processes and plans needed to underpin the successful delivery of MSLs.

¹¹ See FAMR statement <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixd-access-market-reviews-2014/statement-june-2014/volume1.pdf> paragraph 11.92.

This approach has worked well to date in relation to the MSLs imposed in the 2014 FAMR, with Openreach successfully exceeding 120/120 of the MSLs in compliance years 1 and 2 (2014/15 and 2015/16), and where Openreach is currently ahead of all 60 MSLs in year 3.¹²

Ofcom's preferred proposal creates MSL schemes that are out of alignment with all other MSLs, and with the general planning cycles used in the business. This will inevitably create additional management overhead that could otherwise be avoided and which is as such inherently inefficient.

Further, the Ofcom proposal appears to move the repair MSLs into a different cycle than other interconnected regulatory remedies arising from the market review process. For example, in the 2014 FAMR Ofcom correctly set up a link between the MSLs and charge control remedies, such that the additional relevant costs associated with delivery of the MSLs could be reasonably recovered via the regulated charges.¹³ Given the importance of this relationship to the proper functioning of the overall regulatory settlement, it is important that Ofcom's proposals ensure that any period of misalignment between charge control and MSLs is minimised. Openreach is concerned that under Ofcom's existing proposals, there will be a period where the repair MSLs are not aligned with the charge control regime, while Ofcom does not set out in the Interim Consultation how or when this misalignment will be addressed. Openreach has some suggestions in this regard that are set out below, but urges Ofcom to address this uncertainty in relation to regulatory cycles being out of alignment at its earliest opportunity, which appears to us to be via the Interim Consultation. Failure to do this will kick the problem of misalignment into the future, and would unnecessarily perpetuate the period of uncertainty.

Ofcom's preferred option means that compliance will commence during a period of the year that is (operationally speaking) likely to be more challenging than April. This may mean that the beginning of the interim repair MSLs may be associated with relatively lower results than those associated with a normal cycle that runs April to March. We remain concerned that this approach, in addition to creating additional overheads and complexity as noted above, will lead to greater internal challenges in relation to communicating progress and motivating the operational teams charged with exceeding the MSLs (e.g. because there is seen to be a 'bad' rather than 'good' start to the MSL compliance year, while the same teams may also be subject to overlapping objectives from MSLs running on different cycles).

Finally, we note that with the MSLs operating on different cycles, this will require changes to the way that progress is communicated to stakeholders. Again, this will create additional complexity which ideally should be avoided or at least minimised.

For the reasons set out above, Openreach does not consider Ofcom's proposal to be proportionate or objectively justifiable.

Openreach proposals

Ofcom has noted the proposal previously made by Openreach during discussions ahead of the publication of the Interim Consultation. Openreach considers that the proposal it made (which has been accurately represented by Ofcom in the Interim Consultation document) met the required tests of being objectively justifiable, not unduly discriminatory, proportionate and transparent. We also note, however, that Ofcom is choosing to reject this proposal on grounds that it has concerns in relation to the robustness of the compliance calculations associated with such a scheme.¹⁴

Openreach considers that there is another option available to Ofcom that carries with it fewer problems than those associated with Ofcom's currently favoured approach whilst offering a means to resolve the issue of misalignment, and which in consequence should be adopted as the final interim arrangement.

¹² Based on performance up to week ending 2 September 2016.

¹³ See FAMR statement: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf> paragraph 19.77.

¹⁴ See Interim Consultation paragraphs 3.32 and 3.33.

Openreach's proposal is that Ofcom adopt a repair MSL with an 18 month compliance period running from October 2016 to March 2018 inclusive. This scheme would only differ from what Ofcom is currently proposing as its preferred approach in that the compliance period would run for an additional 6 months. Although this is not 'ideal' in that there remains a period of time when the repair MSL is misaligned with other connected processes (both operational and regulatory), it carries a number of advantages over Ofcom's currently preferred solution whilst addressing Ofcom's concerns in relation to the earlier Openreach proposal:

- It will bring the repair MSLs back into alignment with the copper provision MSLs no later than April 2018. Under Ofcom's current proposal, no method has been articulated as to how or when the MSLs will be re-aligned.
- It will bring the repair MSLs back into alignment with the broader standard Openreach planning cycle no later than April 2018. Again, under Ofcom's current proposal, there is no articulated method as to how or when this alignment will be achieved.
- On the assumption that Ofcom wishes to get the MSLs themselves into alignment at some point, and that it wishes to also ensure that interconnected regulatory remedies (e.g. MSLs and charge control) are aligned, this proposal offers a straight-forward means to achieve this outcome without the need for further detailed work in the near future. In this regard, we note that Openreach has already agreed interim charge control arrangements with Ofcom in order to cater for delay to the re-setting of the regulation via the market review process,¹⁵ and that it is therefore quite feasible for the next market review to be up to 1 year late (i.e. for the new remedies to come into effect from April 2018). We also note that under Ofcom's currently proposed approach, the repair MSLs would automatically roll forward by 1 year from 1 October 2017 to 31 September 2018, and as such if Ofcom wants to address both the cycle and inherent structure of the repair MSL in the market review it will need to consult on additional modifications as part of that market review process. Openreach's scheme would enable Ofcom to address the question of the cycle now rather than in future. In this regard, Openreach considers that its proposal is far cleaner and less burdensome for Ofcom to implement.
- It offers greater certainty (and thereby transparency) to all stakeholders in relation to the nature of the Interim repair MSL schemes until such a time as they are further updated as a result of the market review process.
- The compliance assessment would be straightforward, and would be simply calculated over an 18 month rather than 12 month period. This should deal with Ofcom's concerns in relation to the earlier Openreach proposal (as noted above).

In view of these factors, Openreach considers that this proposal is justified against the legal tests that Ofcom is required to meet:

- It is objectively justifiable in maintaining MSLs in relation to key services in an uninterrupted form until such a time as the MSLs can be reviewed / revised as a consequence of the market review process, which is ongoing but subject to delay. Further, it is objectively justifiable to bring the repair MSLs back into alignment with the provision MSLs, the charge control period as well as the Openreach planning cycle.
- It is not unduly discriminatory in any way.
- It is proportionate in that the amendments will be specifically targeted at those areas for which regulation is required and goes no further than is required to address the competition issues identified, whilst the approach will also minimise the chances of different schemes remaining

¹⁵ See exchange of letters between Openreach and Ofcom dated 2 and 4 August 2016. These set out interim arrangements for a period of up to 9 months (i.e. until 31 December 2017) but with the ability to extend this further by mutual agreement. See <http://stakeholders.ofcom.org.uk/telecoms/telecoms-competiton-regulation/narrowband-broadband-fixed/lacuna-update/>

out of alignment (which has negative operational consequences for Openreach) beyond a specified and known point in time.

- It is transparent, in that it is clear that the intention of the proposal is to ensure that BT maintains a minimum level of quality of service in relation to a number of key factors of importance to CPs that purchase these wholesale inputs. Openreach considers that its proposal provides particular clarity and certainty for stakeholders because it will realign the compliance periods for the repair MSLs with the provision MSLs and charge controls.

Openreach notes that the solution it has proposed is still not 'ideal' and that it will continue to present some challenges. For example, under this proposal there would be 2 winter periods within the 18 month compliance period. However, Openreach considers that as an interim, time-bound arrangement and given the options available in the circumstances, this is acceptable and that 18 months should provide Openreach with sufficient time to manage the necessary contingency needed to cope with multiple winters in the same compliance period. We also consider that such an approach is preferable to the Ofcom alternative which currently offers no certainty in terms of how or when the MSLs and other important processes will be aligned (as discussed in detail above).

In other words, we believe this is the best available solution. In the circumstances Openreach is willing to enter into such a scheme, and we consider that it would also ensure that the competition concerns that have led Ofcom to intervene in the first place would be fully addressed until the wider review of the MSLs (and other remedies) can be completed via the market review process.

Question 3: Do you agree with Ofcom's proposal to consent to dis-apply the existing repair minimum standards for 2016/17? If not, please set out your reasons.

Openreach considers that it would be undesirable and disproportionate for it to be subject to multiple overlapping compliance obligations arising from different MS� remedies.

Regarding the risk identified by Ofcom in relation to its proposed approach i.e. that Openreach is not incentivised to provide strong service delivery against the current MS�s until the proposed interim remedies take effect, Openreach notes that:

- It remains subject to a comprehensive set of reporting obligations which are themselves subject to regular review by Ofcom;
- It remains subject to the existing MS� obligations until such a time as Ofcom dis-applies such obligations; and
- At time of writing Openreach remains on track to exceed all of the 20 repair MS�s imposed in the 2014 FAMR in the period April to September 2016 inclusive. The year to date performance against the MS�s is set out in table 1 below.

Table 1. Performance against the repair MS� 2016/17 YTD¹⁶

Region	YTD performance WLR at SML1 (%)	YTD performance MPF at SML2 (%)
North East	80.8%	79.7%
North Wales & North Midlands	79.6%	78.6%
North West	81.3%	79.2%
Scotland	80.5%	80.9%
East Anglia	79.2%	79.2%
London	84.8%	81.4%
South East	81.9%	80.6%
South Wales & South Midlands	82.7%	80.6%
Wessex	83.1%	82.1%
Northern Ireland	84.4%	83.2%

In summary, therefore, although the risk identified by Ofcom theoretically exists, we do not consider that it arises in practice, and that in consequence it is not a valid reason in of itself for Ofcom to change its stated approach.

¹⁶ Results cover the period from April 2016 to week ending 2nd September 2016.

Question 4: Do you agree with Ofcom's proposals relating to the KPI reporting obligations set out above, and do you agree with the Directions we propose to issue as set out in Annex 5? If not, please set out your reasons.

Openreach agrees with the proposals set out by Ofcom in the Interim Consultation. Further commentary is set out below.

Ofcom proposals relating to performance KPIs for MPF SML 1

It is right in the circumstances covered by the Interim Consultation that the KPI reporting obligations are extended to include MPF at SML1. This SML variant for MPF was not available for CPs to purchase when the MSLs were originally imposed in the 2014 FAMR. Given, however, that this product variant now exists, is being purchased at scale, and most importantly that it will form part of the revised interim repair MSL scheme, it is important that it is included in the KPI remedy in order for that remedy to be comprehensive. It is also right that the additional MPF reports align with those that are available for WLR such that there is consistency between the products, and that any concerns relating to discrimination can be properly assessed.

Regarding the public KPIs, Openreach notes that Ofcom's preferred proposal is for the existing repair scheme to be replaced from October 2016 with the new scheme which is structured quite differently, and that this gives rise to some presentational implications. For example, under the current public KPIs, one of the measures shown is '*Repairs within agreed time – maintenance level 1*' which currently is solely by reference to WLR. Going forward, this measure would change to a combined measure showing the performance at SML1 of WLR and MPF combined. Openreach considers that further explanation should be provided on the publicly available website in order to ensure that the changes made as a consequence of the Interim Consultation are clearly signposted and that the data contained on the site remains relevant and intelligible to its users. Openreach also notes that Ofcom has not expressed a view in the Interim Consultation as to whether the historic quarterly data that is part of the existing public site, but that will change from October 2016 (in terms of the underlying measurement) should remain part of the main site along with the updated measures, or should be moved to a publicly available data archive. Openreach would welcome further discussion with Ofcom on such matters, such that the necessary preparation can be made to the public site to reflect the changes arising from the Interim Consultation and ensure that the changes are made in such a way as not to confuse users of the site.

Openreach considers that it will be able to meet the deadline of 18 November 2016 for the commencement of the additional reporting requirements. Openreach will keep Ofcom updated if this position changes. This could arise, for example, in circumstances where extended testing was required in order to ensure the accuracy of a new report. We also note in this regard the relatively short period of time that Openreach has been given to make ready the new reports. As Ofcom notes in the Interim Consultation, the most important factor is that the data provided is accurate.¹⁷

Ofcom proposals relating to the reporting deadline for two KPIs

Openreach agrees with Ofcom's proposal to amend the deadline relating to KPI data for the volumes of installations and repairs impacted by 'MBORC' declarations. As Ofcom notes in the Interim Consultation, the data in these KPIs is subject to a validation process to ensure accuracy, and the nature of the validation process means that it is not possible to complete this exercise within 14 working days of the beginning of each month in respect of the previous month's results. This misalignment between reporting obligations and local validation process has meant that when changes are needed as a result of the validation process, results have had to be restated to Ofcom.

In these circumstances we consider that Ofcom's proposal is sensible and proportionate, and will allow sufficient time for the validation process to be undertaken ahead of the data being submitted in the KPIs (and thereby reduce the need for restatement).

¹⁷ See Interim Consultation paragraph 3.45.

Openreach also agrees with Ofcom that the change proposed will not have any material impact on Ofcom's monitoring of Openreach's performance, noting that the relative delay versus the existing scheme is very small, and that the key consideration is that the data provided is accurate.

Question 5: Do you agree with Ofcom's proposal to continue the existing minimum standards, and do you agree with the Directions we propose to issue set out in Annex 5? If not, please set out your reasons.

Openreach understands that Ofcom is taking this step in order to ensure that the MSL remedies do not disappear entirely in circumstances where the market review process is subject to delay (as is the case now), and notes that Ofcom took a similar approach in the 2016 Business Connectivity Market Review (BCMR).¹⁸

In the specific circumstances that currently exist, Openreach supports this aspect of the Ofcom proposals as it will ensure that an important aspect of the Quality of Service remedies remain in place.

However, Ofcom should not interpret this to be support for such an approach in any circumstances. In particular, the application of regulatory remedies should not automatically be considered appropriate, and in the normal course of events, the application of regulation should only be applied following appropriate due consideration – which is best conducted via a public consultation, such as via a market review process. Failure to adhere to this approach could result in inappropriate regulation continuing to exist beyond the period where it has been objectively justified on an ex ante basis.

Ofcom also needs to further consider how its proposals are likely to play out in the medium term, taking into account expected timing of the market review process that will replace the broader regime that was implemented by the 2014 FAMR, along with the desirability of getting the various remedies into alignment as quickly as possible (as discussed in detail above in response to question 2).

For example, under the current proposals, in circumstances where the market review was not sufficiently advanced by October 2017, the repair MSLs would automatically roll forward until end of September 2018, and would in theory remain out of alignment with the provision schemes and, presumably, other important aspects of the regulatory landscape including the charge control. As set out in more detail in Openreach's response to question 2, we consider that Ofcom should have regard to dealing with the problems of misalignment now, rather than later, and that it is important to provide certainty in this respect as soon as possible.

¹⁸ See BCMR statement: <http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr-2015/statement/final-annex-35.pdf> pages 168-169.